

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

---

EVERYTOWN FOR GUN SAFETY  
ACTION FUND, INC.,

Plaintiff,

v.

DEFCAD, INC.; ODYSEE USER  
XYEEZYSZN; DEFCAD USER  
XYEEZYSZN; ODYSEE USER  
THEGATALOG-PRINTABLEMAGAZINES;  
THE GATALOG; DEFCAD USER  
FREEMAN1337; TWITTER USER  
XYEEZYSZN; PHILLIP ROYSTER.

Defendants.

---

Civil Action No. 1:21-cv-8704

**DECLARATION OF  
MARCELLA BALLARD IN  
SUPPORT OF PLAINTIFF’S  
APPLICATION FOR ORDER  
TO SHOW CAUSE FOR  
PRELIMINARY  
INJUNCTION, EXPEDITED  
DISCOVERY, AND  
ALTERNATIVE SERVICE**

I, Marcella Ballard, declare as follows<sup>1</sup>:

1. I am over eighteen (18) years old and I am competent to testify to the facts in this Declaration based on my personal knowledge.

2. I am a partner with the law firm Venable LLP, counsel for Plaintiff Everytown For Gun Safety Action Fund, Inc. (“Plaintiff”).





3. I submit this declaration to: (1) provide the Court with true and correct copies of trademark records; (2) state facts demonstrating why bringing on an order to show cause is necessary; and (3) to affirm that no other previous application for similar relief has been made.

---


<sup>1</sup> All undefined terms herein are defined as in Plaintiff’s Complaint.

4. True and correct copies of the trademark registration certificates are attached as

**Exhibit 1** and summarized below:

USPTO Registration No.	Mark	Goods/Services Summary <sup>2</sup>
5142124	EVERYTOWN (Standard character mark)	Classes 9, 35, 36, 38, 41, 45
5092082	EVERYTOWN (Standard character mark)	Classes 21, 25, 26, 35
5223511	EVERYTOWN FOR GUN SAFETY ACTION FUND (Standard character mark)	Classes 35, 36, 38
5142128	EVERYTOWN FOR GUN SAFETY SUPPORT FUND (Standard character mark)	Classes 9, 35, 36, 38, 41, 45
5142125		Classes 9, 35, 36, 38, 41, 45
5142126		Classes 9, 35, 36, 38, 41, 45
5092083		Classes 18, 21, 25, 26, 35
6213804		Classes 9, 16, 18, 21, 26, 35, 41

<sup>2</sup> The full description of goods and services is described within the trademark registration certificates attached as **Exhibit 1**.

USPTO Registration No.	Mark	Goods/Services Summary <sup>2</sup>
4569205	MOMS DEMAND ACTION  (Standard character mark)	Class 35
5092084	MOMS DEMAND ACTION  (Standard character mark)	Classes 18, 21, 25, 26, 35
5151549		Classes 35, 36, 38, 41

5. The MOMS DEMAND ACTION® Reg. No. 4569205 is incontestable pursuant to 15 U.S.C. §1065. A true and correct copy of the notice of acceptance and acknowledgement available from the USPTO concerning the incontestability of Reg. No. 4569205 is attached as **Exhibit 2**.

6. Per Local Civil Rule 6.1(d) an order to show cause is necessary because the Defendants are utilizing various online account holder names that do not provide identifying information which Plaintiff can confirm.

7. Plaintiff is currently unable to verify Defendants' true identities, or other identifying information, like their legal names, and addresses, through which litigants normally serve or correspond with lawsuit defendants and is currently in possession of two email addresses associated with certain Defendants, and only one physical address that is associated with Defendant Defcad, Inc.

8. An individual who purports to be an attorney submitted a counternotice to Plaintiff's infringement notice submitted on [www.odysee.com](http://www.odysee.com) in connection with the Defendants' conduct, but the counternotice provided no information other than the individual's name.

9. Searching the attorney's name in the New York State Unified Court System Attorney Online Search database yielded no attorney results. We are unaware if the individual represents the Defendants in this action.

10. This Application is necessary to effectuate timely service, and to obtain true identifying information from the website platforms and third parties assisting Defendants.

11. Plaintiff has acted with urgency in this Application:

- a. Plaintiff immediately sought to have Defendants' product listings removed from [www.odysee.com](http://www.odysee.com) and [www.defcad.com](http://www.defcad.com);
- b. Plaintiff learned of additional twitter.com posts on October 4, 2021; and
- c. Plaintiff brings this Application and Complaint within weeks of learning that Defendants' Infringing Product listings were reinstated on [www.odysee.com](http://www.odysee.com) and [www.defcad.com](http://www.defcad.com).

12. Per Local Civil Rule 6.1(d), Plaintiff has not made any previous application for similar relief against the Defendants.

13. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 21, 2021



---

Marcella Ballard